EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

Civil Action No. 559

UNITED STATES OF AMERICA, *Plaintiff*,

v.

SAVANNAH COTTON AND NAVAL STORES EXCHANGE, INC.,
TURPENTINE AND ROSIN FACTORS, INC.,
PINE TREE PRODUCTS, INC.,
COLUMBIA NAVAL STORES COMPANY OF HAZELHURST, GEORGIA,
COLUMBIA NAVAL STORES COMPANY OF FITZGERALD, GEORGIA,
COLUMBIA NAVAL STORES COMPANY OF JESUP, GEORGIA, and
COLUMBIA NAVAL STORES COMPANY OF TIFTON, GEORGIA,
Defendants.

Findings of Fact

On October 18, 1951, a Final Judgment was filed in the above-numbered case on consent of the parties. The complaint in the case stated a cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended.

The final judgment reads in part as follows:

"* * *

"VII

Each of the Columbia defendants and T&R defendants is enjoined and restrained from:

(A) Refusing to comply with the request of an independent reporter or service designated by the United States Department of Agriculture for such information as to purchases and sales of crude gum and rosin and turpentine as may be requested by said reporter or service;

(B) Causing, coercing or inducing in any manner, any person to fail to comply or cooperate with the request of an independent reporter or service designated by the United States Department of Agriculture for such information as to purchases and sales of crude gum and rosin and turpentine as may be requested by said reporter or service;

"• • •

"X

Jurisdiction of this action is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and the punishment of violations thereof."

On May 4, 1960, eight years and six months after entry of Judgment, defendant, Turpentine & Rosin Factors, Inc., filed its petition pursuant to the above Section X for an order to modify judgment by striking therefrom Subsections (A) and (B) of Section VII thereof. The petition recites that petitioner is the only one of the defendants in this case now in business, all of the other defendants having long since ceased to operate, and that petitioner has numerous competitors who are not defendants herein and therefore not restrained by Court order from refusing to report such information as to purchases and sales of crude gum, rosin, and turpentine as may be requested by an independent reporter or service designated by the United States Department of Agriculture, and therefore due to this change petitioner is placed at a competitive disadvantage with other naval stores dealers.

Petitioner takes the position that there is not and can not be any dispute between the parties as to the facts but that the only issue between the parties is whether or not there has been since the entry of the judgment herein such a substantial change in circumstances that the necessity of the provisions no longer exists.

On July 5, 1960, the Government filed its Memorandum in Opposition to the petition filed herein. It opposes the petition on the grounds that, first, petitioner failed to state grounds entitling it to the relief requested, or any relief, from said judgment, and second, modification of the judgment, as requested by petitioner, would not be in the public interest and, on the contrary, elimination of Subsections (A) and (B) of Section VII would be contrary to the public interest.

In its memorandum, the Government takes the position that petitioner may not be relieved from the so-called reporting provisions unless there has occurred since entry of judgment such changes in circumstances that the necessity for such provisions no longer exists and that petitioner has not alleged sufficient changes in circumstanges resulting in petitioner suffering an extreme and unexpected hardship to warrant the modification prayed for in the petition.

The petition was set for hearing and was held on July 6, 1960. On that date, petitioner waived that part of its petition requesting the striking of Subsection (B) of Section VII and before proceeding to hearing it was agreed in open court between the Court and respective counsel that the only issue remaining for hearing was the question of whether there has occurred since the entry of the judgment such changes in circumstances that the necessity for the provisions of Subsection (A) of Section VII no longer exists. There-upon witnesses were offered by the petitioner and the Government and exhibits were offered by the Government and admitted by the Court.

I come, therefore, to the question of whether, under the state of record, modification of the judgment would be warranted on the ground that by being the only gum naval stores dealer in the industry subject to the requirement of reporting its purchases and sales of gum naval stores it is subject to such competitive disadvantage as to impose upon petitioner an undue and unreasonable hardship.

Conclusions of Law

The record shows that petitioner has competitors who are not subject to the compulsory reporting provisions of the judgment herein and that petitioner is the only naval stores dealer in the United States who thus is required by law to report the purchase and sales information required by that judgment. At the hearing, testimony was introduced by the petitioner expressing the opinion that some sales of naval stores by petitioner had been lost because of the provisions of reporting of the judgment and that petitioner therefore was placed at a competitive disadvantage; but that if petitioner were released from the compulsion of reporting its purchases and sales of naval stores it would continue to make such reports voluntarily except in those cases where customers request that petitioner refrain from making such report. The record does not reveal any fact from which can be measured the impact or effect upon defendant's volume of sales, profits or ability to compete flowing from the asserted fact that petitioner is the only naval stores dealer required by a judgment to report its purchases and sales information. The mere fact that it may be the only dealer so required does not, ipso facto, entitle petitioner to relief unless that fact is clearly shown to result in "grievous wrong" or undue and unreasonable, financial or competitive hardship to the defendant.

I find the case of *United States* v. *Swift & Company, et al.*, 286 U.S. 106, to be very helpful in my search for guiding precedents.

In this case, which was a Sherman Act case brought by the Government against the leading meat packers in the country, a consent decree was entered on February 27, 1920, and, on April 12, 1930, approximately 10 years and 2 months after the entry of the decree, two of the defendants, Swift & Company, and Armour & Company, and their subsidiaries, filed a petition to modify the consent decree and to adapt its restraints to the needs of a new day. On January 31, 1931, the decree was modified by a lower Court and such modification became the subject of appeal.

Mr. Justice Cardozo delivered the opinion of the Supreme Court on May 2, 1932, and, on page 115, I find the following:

> "Power to modify existing, we are brought to the question whether enough has been shown to justify its exercise.
>
> "The defendants, controlled by experienced business men, renounced the privilege of trading in groceries, whether in concert or independently, and did this with their eyes open. * * *"

and, on page 119, I find the following:

> "There is need to keep in mind steadily the limits of inquiry proper to the case before us. We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting. Life is never static, and the passing of a decade has brought changes to the grocery business as it has to every other. The inquiry for us is whether the changes are so important that dangers, once substantial, have become attenuated to a shadow. No doubt

> the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned."

The decree modifying the injunction was accordingly reversed.

I am of the opinion that, in view of the tight requirements laid down in the *Swift & Company* case, which are today as applicable as then, as enunciated in the case of *United States* v. *Owens-Corning Fiberglas Corporation, et al.*, 178 F. Supp. 385 (1959), and in view of the record that is before me under this petition, this Court would not be warranted in decreeing a modification so as to strike therefrom the reporting provision applicable to petitioner. Despite the fact that petitioner stresses that it would limit the effects of a modification by continuing to report its purchases and sales to the Naval Stores Marketing News Service on a voluntary basis except when requested otherwise by a customer, I feel that this could not be done without making possible a return of the evils which the judgment herein endeavors to circumvent. A modification that would relinquish the reporting requirements of the judgment therefore would go to the very heart of the prohibitions that were consented to in the judgment and would, in effect, virtually nullify a great portion of it. The petition to modify is denied. An order may be drawn accordingly.

F. M. Scarlett
United States District Judge

July 21, 1960 at
Brunswick, Georgia.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

Civil Action No. 559

UNITED STATES OF AMERICA, *Plaintiff*,

v.

SAVANNAH COTTON AND NAVAL STORES EXCHANGE, INC., ET AL.,
TURPENTINE AND ROSIN FACTORS, INC.,
PINE TREE PRODUCTS, INC.,
COLUMBIA NAVAL STORES COMPANY OF SAVANNAH, GEORGIA,
COLUMBIA NAVAL STORES COMPANY OF HAZELHURST, GEORGIA,
COLUMBIA NAVAL STORES COMPANY OF FITZGERALD, GEORGIA,
COLUMBIA NAVAL STORES COMPANY OF JESUP, GEORGIA, and
COLUMBIA NAVAL STORES COMPANY OF TIFTON, GEORGIA,
Defendants.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on October 11, 1950; defendants having filed their answers to the Complaint denying the substantive allegations thereof; and plaintiff and defendants by their attorneys having severally consented to the entry of this Final Judgment without adjudication of any issue of fact or law herein, and without admission by any defendant in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein, and upon the aforesaid consent of all parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of all the parties hereto, and the Complaint states a

cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", as amended.

II

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, members, agents, employees, subsidiaries, successors and assigns, any person having a controlling influence in such defendant, and all other persons acting under, through or for such defendant.

III

As used in this Final Judgment:

(A) "Exchange" shall mean Savannah Cotton and Naval Stores Exchange, Inc., a corporation organized and existing under the laws of the State of Georgia;

(B) "Columbia defendants" shall mean defendants Columbia Naval Stores Company of Savannah, Georgia, Columbia Naval Stores Company of Hazelhurst, Georgia, Columbia Naval Stores Company of Fitzgerald, Georgia, Columbia Naval Stores Company of Jesup, Georgia, and Columbia Naval Stores Company of Tifton, Georgia or any of them;

(C) "T & R defendants" shall mean defendants Turpentine and Rosin Factors, Inc. and Pine Tree Products, Inc., or either of them;

(D) "Crude gum" shall mean the gum originally produced by scarifying living pine trees;

(E) "Rosin and turpentine" shall mean gum rosin and gum turpentine obtained by distillation of crude gum, or either of them, or any grade thereof;

(F) "Person" shall mean an individual, partnership, firm, association, corporation, cooperative or other legal or business entity.

IV

Defendant Exchange is ordered and directed to terminate, twelve months following entry of this Final Judgment, all activities of said defendant relating to rosin and turpentine, and is perpetually enjoined from thereafter conducting or engaging in, directly or indirectly, any such activities, unless the defendant Exchange moves this Court, within thirty days prior to the expiration of said twelve months, to amend this Section IV and, on such motion, the defendant establishes, and the Court finds, that the continued operation of the defendant Exchange is in the public interest. Any such motion by the defendant Exchange shall be upon reasonable notice to the Attorney General with an opportunity on the part of the latter to be heard.

V

(A) Defendant Exchange is ordered and directed forthwith to amend its rules, regulations and by-laws and to take such other steps as are necessary or appropriate to:

(1) Prevent any member, or any other person which sells or offers for sale any rosin or turpentine on the Exchange, from purchasing or bidding for, or causing to be purchased or bid for, directly or indirectly, any rosin or turpentine on the Exchange;

(2) Prevent any member or any other person engaged in, or having any affiliation whatsoever with any person engaged in, buying or processing crude gum or making first sales of the primary derivatives of crude gum, from purchasing or bidding for, or causing to be purchased or bid for, directly or indirectly, any rosin or turpentine on the Exchange;

(3) Require each member and each person authorized to buy or sell on the Exchange to report to an independent reporter or service designated by the United States Department of Agriculture such information as to purchases and sales of crude gum and rosin and turpentine as may be requested by said reporter or service.

(B) In the event that any member, or any other person, authorized to buy or sell on the Exchange, refuses to comply with the reporting program referred to in subsection (A)(3) of this Section V, defendant Exchange is ordered and directed forthwith to expel such member from the Exchange, and to forbid that member or such other person, as the case may be, from utilizing, directly or indirectly, the facilities of the Exchange.

VI

Defendant Exchange is perpetually enjoined and restrained from posting, publishing or disseminating any price for rosin or turpentine, including, but not limited to, any price based on weighted averages or any price for a grade based on prices for other grades, which is not the sale price at which rosin and turpentine were in fact sold on the Exchange.

VII

Each of the Columbia defendants and T & R defendants is enjoined and restrained from:

(A) Refusing to comply with the request of an independent reporter or service designated by the United States Department of Agriculture for such information as to purchases and sales of crude gum and rosin and turpentine as may be requested by said reporter or service;

(B) Causing, coercing or inducing, in any manner, any person to fail to comply or cooperate with the request of

an independent reporter or service designated by the United States Department of Agriculture for such information as to purchases and sales of crude gum and rosin and turpentine as may be requested by said reporter or service;

(C) Buying or bidding for, or causing to be bought or bid for, directly or indirectly, any rosin or turpentine on the defendant Exchange.

VIII

Each defendant is hereby ordered and directed to give notice of the terms of this Final Judgment to its officers, directors, members and subsidiaries, and to take such steps as are necessary to cause such persons to comply with said terms.

IX

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to any defendant, be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment and, subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Judgment any defendant, upon the written request of the Attorney General or an Assistant Attorney General, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Judgment. No information obtained by the

means permitted in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceeding for the purpose of securing compliance with this Final Judgment in which the United States is a party, or as otherwise required by law.

X.

Jurisdiction of this action is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and the punishment of violations thereof.

Dated: Oct. 18, 1951

F. M. SCARLETT
United States District Judge

We hereby consent to the entry of this Final Judgment.

For the Plaintiff:

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